

HIGH COURT OF TRIPURA

AGARTALA

MAC APP 80 OF 2024

1. Smt. Mamata Paul,

W/o Shri Rabindra Paul of Tulabagan, 1 No. Colony,
P.O. Tulabagan, P.S. Sidhai, Mohanpur Municipal Council,
Sidhai Mohanpur, West Tripura District.

2. Shri Rabindra Paul,

S/o Lt. Balaram Paul of Tulabagan, 1 No.Colony,
P.O. Tulabagan, P.S. Sidhai, Mohanpur Municipal Council,
Sidhai Mohanpur, West Tripura District.

....Appellants.

Versus

1. Dipak Das,

S/o Shri Dulal Ch. Das of West Chanmari, near Rubber Board,
P.O. Kunjaban, P.S. N.C.C., Agartala, Tripura (W).
M-7005165422.(Owner of vehicle No.TR01AW-0464, Maruti Eeco).

2. The Branch Manager,

United India Insurance Company Ltd.,
Agartala Division, R.M.S. Chowmuhan,
Opposite of Kiran Medical Hall,
Agartala Tripura (W), 799001.
(Insurer of vehicle No.TR01AW-0464).

....Respondents.

BEFORE

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

For the Appellant(s) : Mr. Samar Das, Advocate.

For the Respondent(s) : Ms. R. Purkayastha, Advocate.

Date of hearing and date of
delivery of Judgment & Order : **27.01.2026**

Whether fit for reporting :

YES	NO
	✓

JUDGMENT & ORDER (ORAL)

Heard learned counsel of both sides.

2. Both the appellants filed a claim petition before the learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala bearing No. TS(MAC) 3 of 2021 alleging, *inter alia*, that on 10.03.2020, at about 3:30 pm, when their son, Mithan Paul along with his friends were returning from Simna by riding a motor cycle bearing Registration No.TR01H-0862, at Nandalal Das Para on Agartala-Simna road one vehicle bearing Registration No.TR01AW-0464 [Maruti Eeco] dashed the motorcycle from behind. As a result, their son received multiple injuries and when he was taken to Mohanpur Hospital, he was declared dead. Concerning the said accident, Sidhai P.S.Case No. 24/2020, under Sections 279/304(A) of IPC was also registered on the basis of an FIR lodged by Rabindra Paul, the appellant-petitioner No.2. The investigating authority submitted the charge-sheet against accused Dipak Das, driver of said Maruti Eeco vehicle for commission of offence under Sections 279/304(A) of IPC and also under Sections 184/187 of M.V. Act holding him *prima facie* responsible for the said accident.

3. The petitioners [appellants herein], thereafter submitted claim petition before the Motor Accident Claims Tribunal praying for an amount of Rs.43,70,000/- as compensation from said Dipak Das and the insurer, the United India Insurance Co. Ltd., the respondents herein.

4. During trial, both the petitioners were examined as PW-1 and PW-2 respectively. The respondent No.1 submitted his examination-in-chief as OPW-1, but he did not face any cross-examination. However, the learned Tribunal observed that the owner of the said Maruti Eeco vehicle produced the photocopies of vehicular documents and the driving license of the driver without producing the originals as in a connected case, bearing No. TS (MAC) 165/2020 arising out of the same accident, the owner had produced the originals. Therefore, learned counsel of the insurance company did not oppose in taking into consideration the photocopies of said documents in connection with this case.

5. Learned Tribunal by the impugned award determined the total compensation of Rs.15,38,000/- (Rupees fifteen lakh thirty eight thousand) only but ultimately, reduced 10% of the said sum on the ground of contributory negligence on the part of the deceased and finally awarded

an amount of Rs. 13,84,200/- [Rupees thirteen lakh eighty four thousand two hundred] only to the petitioners along with interest @ 7.5% per annum upon the said amount from the date of filing of claim petition till payment.

6. Learned Tribunal also determines the compensation relying on the decision of Hon'ble Supreme Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi, AIR 2017 SC 5157; Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr., AIR 2009 SC 3104*** and ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 SCC OnLine SC 1546***.

7. Learned counsel, Mr. Samar Das appearing for the appellant-petitioners submits that the appellants have only a limited grievance against the deduction of 10% of the amount on the ground of contributory negligence, otherwise, the determination of compensation by the learned Tribunal was just and proper and in accordance with law.

8. Learned counsel, Mr. Das referring to the observations made by learned Tribunal submits that without any evidence learned Tribunal has made out a third case of contributory negligence by drawing certain inference that just because of three persons were there on the said motorcycle of the deceased at the time of accident, there was contributory negligence on the part of the deceased. According to learned counsel, such observations are totally based on conjectures and cannot sustain. However, learned counsel, Mr. Das also submits that the insurance company in their written statement raised the plea of riding of motorcycle by the deceased with two other pillion riders and therefore they claimed that it was a breach of specific conditions of a policy and the deceased had contributed to the accident.

9. Learned counsel, Ms. R. Purkayastha appearing for the respondent-United India Insurance Co. Ltd. submits that it has come out from the cross-examination of the father of the deceased [PW-2] that on the date of accident, there were two pillion riders on the motorcycle of the deceased and thus it was established in the evidence that the deceased was responsible for the said accident by violating the Motor Vehicle Rules and also the terms of the insurance policy, and therefore, the learned

Tribunal was justified in reducing 10% of the total amount as assessed as compensation on the ground of contributory negligence. Learned counsel also submits that no specific plea has been taken by the appellants in this appeal challenging the said findings of learned Tribunal.

10. During hearing, so far the question raised by learned counsel Ms. Purkayastha that no specific plea was taken in the memo of appeal in the matter of finding of learned Tribunal regarding reduction of 10% of contributory negligence, is concerned, this Court finds no limitation in exercising appellate jurisdiction to interfere in the matter of awarding of less amount of compensation, even though, no such plea is specifically raised by the appellants in the appeal. When they have preferred the appeal challenging the award itself on the ground of inadequacy of amount, and the provision being beneficial legislation, there is no bar in enhancing the quantum of compensation in this appeal.

11. Learned counsel, Mr. Das in this regard also relies on a decision of Hon'ble Supreme Court in the case of ***Ranjana Prakash & Ors. vs. Divisional Manager & Anr., (2011) 14 SCC 639*** and relevant paragraph No.8 is extracted here-in-below for useful reference-

“8. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by owner/insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation.”

12. This Court has also considered the submissions of learned counsel of both sides on the facts of the case. As it appears, learned Tribunal has drawn an inference in absence of any evidence in this regard

that just because, the deceased was riding the motorcycle having two pillion riders behind him, he was responsible for the said accident to some extent. This Court is constrained to hold that such observation made by learned Tribunal is beyond the record. By taking two pillion riders on his motorcycle, the deceased might have violated the Motor Vehicle rules for which he could be penalized otherwise, if he would be alive. But just because of three persons were there on the motorcycle, it cannot be said that he was responsible for the accident, or that he had contributed in the accident. Moreover, in the present case, his motorcycle was dashed from behind by the offending vehicle.

13. This Court is in total disagreement with the observations of the learned Tribunal that as the deceased was travelling with two other persons on the same motorcycle, it was difficult for him to ride the motorcycle and so, there was contributory negligence on his part. Drawing of such inference without any evidence on that point is impressible at law. The insurance company though raised the plea of contributory negligence in their written statement but they did not produce any evidence to establish such plea. Moreover, the investigating officer after investigation also did not find the deceased to be responsible, even partly, for the said accident and for that reason, he submitted charge-sheet only against the driver of the offending Maruti Eeco vehicle. There is no challenge of the insurance company regarding submission of said charge-sheet by the police authority.

14. Considering this, the reduction of 10% of the compensation amount on the ground of contributory negligence is totally erroneous and is liable to be upset.

15. In view of above, the appeal is allowed. The award passed by learned Tribunal is modified accordingly. The appellant-petitioners will get compensation of Rs.15,38,000/- along with interest @ 7.5% per annum from the date of filing of claim petition till payment is made.

16. The United India Insurance Company Ltd., the respondent No.2 will now deposit the enhanced amount of Rs. 1,53,800/- [Rs.15,38,000-Rs.13,84,200] only along with the above said interest in the

Tribunal below within two months from the date of receipt of a copy of this judgment. On such deposit, the same shall be equally apportioned between the appellants and would be kept in fixed deposit scheme for next five years. However, the appellants may approach the learned Tribunal for pre-mature withdrawal of said amount on any reasonable ground to be considered by the Tribunal.

17. With such observations and directions, the appeal is disposed of.

18. Return the LCRs with a copy of this judgment.

JUDGE

sanjay

